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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,849	10/18/2001	Harold Fisher	3589.65672	1292

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EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 01/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/869,849

Applicant(s)

FISHER, HAROLD

Examiner

Fenn Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6 and 8-15 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 5-6, 8-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Starrett et al. (U.S. Patent No. 3,888,482). Starrett discloses a device comprising a thumb stabilizing component comprised of a thumb receiving section (19) an index finger receiving section (20) and a non extendable flexible connector (21) and a positioning component (22) having a first end (24) connected to the thumb stabilizing component.
2. Referring to claim 5, Starrett discloses a device with a strap with sufficient length to extend along the palm of the hand and around the wrist and along the backside of the hand.
3. Referring to claim 6, Starrett an integral positioning component and stabilizing component made of a suitable fabric material (column 3 line 1).
4. Referring to claim 8, Starrett discloses a device comprising a thumb stabilizing component comprised of a thumb receiving section (19) an index finger receiving section (20) and a non extendable flexible connector (21) that limits abduction between the thumb receiving section and index finger receiving section and a strap (22).
5. Referring to claim 9, Starrett discloses the device made of a continuous lightweight ribbon material.

6. Referring to claim 10, Starrett discloses the device made of a suitable elastic fabric material. (Column 2, lines 60-67).
7. Referring to claim 11, Starrett discloses a device wherein the thumb receiving section engages a substantial portion of the distal side of the proximal phalange of the thumb.
8. Referring to claim 12, Starrett discloses the index finger receiving section capable of fitting around the base of the proximal phalange of the index finger.
9. Referring to claim 14, Starrett discloses the securing strap attached to the index finger receiving section at the point where the index finger receiving section connects with the connector to hold the receiving sections down on the fingers, wrapped across the hand and wrist of the user. (See fig. 2).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starrett et al. (U.S. Patent No. 3,888,482). Referring to claim 13, Starrett discloses the claimed invention including the connector having a length that the thumb can move and extend back freely but not hyper extend the thumb. The specific angular limitation

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achieved would be a matter of design choice within the knowledge of one with ordinary skill in the art.

12. Referring to claim 15, Starrett discloses a device comprising a thumb stabilizing component comprised of an elastic material comprised of a thumb receiving section (19) an index finger receiving section (20) and a non extendable flexible connector (21) that limits abduction between the thumb receiving section and index finger receiving section and a strap (22) secured to the index finger receiving section for keeping the thumb and index finger receiving sections operatively positioned on the index finger and thumb, respectively, the strap wrapped across the hand and the wrist to secure the splint. Starrett does not disclose the device being comprised of one continuous material, however, it would have been obvious to one having ordinary skill in the art at the time of invention to make the device integral since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). Furthermore the feature of having the thumb abduction limited to 100 degrees is a matter of design choice within the knowledge of the skilled artisan.

#### ***Allowable Subject Matter***

13. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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14. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record (Starrett) discloses all the features, however, it would not be obvious to incorporate the device into a glove or mitten as the device is a pitching aid therefore negating the possibility of having a glove covering up the fingers.

### ***Response to Arguments***

15. Applicant's arguments with respect to claims 1, and 5-15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Anderson                      U.S. Patent No. 4,638,764

Brill                              U.S. Patent No. 5,916,187

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



NICHOLAS D. LUCCHESI  
SUPERVISORY PATENT EXAMINER  
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*gem*

fcm

December 30, 2002